

LEGISLATURE OF NEBRASKA  
NINETY-NINTH LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 628**

Introduced by Howard, 9

Read first time January 19, 2005

Committee: Revenue

A BILL

1 FOR AN ACT relating to schools; to amend sections 77-2704.10,  
2 77-2704.24, 77-27,132, and 79-1018.01, Reissue Revised  
3 Statutes of Nebraska; to create a fund for school  
4 facilities; to impose sales tax on snack food; to  
5 harmonize provisions; to provide an operative date; and  
6 to repeal the original sections.  
7 Be it enacted by the people of the State of Nebraska,

1           Section 1. The Nebraska School Facilities Trust Fund is  
2 created. The fund shall consist of all sales and use taxes derived  
3 from snack food. The Tax Commissioner shall remit such funds to  
4 the Nebraska School Facilities Trust Fund on a monthly basis.  
5 Money in the fund shall be distributed pursuant to section 2 of  
6 this act and expended pursuant to section 3 of this act. All  
7 taxes, fees, and interest earned upon such taxes and fees allocated  
8 to the fund are hereby irrevocably pledged for the purpose of  
9 providing additional resources to schools to construct, maintain,  
10 and equip school facilities and shall, as received by the State  
11 Treasurer, be deposited in the fund for such purpose.

12           Sec. 2.     (1) The State Treasurer shall maintain and  
13 disburse the money in the Nebraska School Facilities Trust Fund as  
14 directed in this section.

15           (2) All disbursements from the fund shall be made upon  
16 warrants drawn by the Director of Administrative Services. Any  
17 money in the fund available for investment shall be invested by the  
18 state investment officer pursuant to the Nebraska Capital Expansion  
19 Act and the Nebraska State Funds Investment Act. The earnings, if  
20 any, shall be credited to the fund.

21           (3) On September 1 of each year the State Treasurer shall  
22 distribute an amount to all school districts in proportion to the  
23 number of adjusted formula students, as defined and determined in  
24 section 79-1007.01, of each school district from the most recent  
25 data available on November 1 of the school year immediately  
26 preceding the school fiscal year in which the fund payment is to be  
27 paid, weighted by the capital needs weighting factor of the school  
28 district and the cost-per-square foot weighting factor.

1           (4) For purposes of this section:

2           (a) Capital needs weighting factor is one if the average  
3 age of all school buildings in the school district is XXX, one and  
4 two-tenths if the average age of all school buildings in the school  
5 district is XXX, and one and three-tenths if the average age of all  
6 school buildings in the school district is XXX; and

7           (b) Cost-per-square foot weighting factor is one if the  
8 average school building enrollment capacity of the school district  
9 is XXX, and shall be one and two-tenths if the average school  
10 building enrollment capacity of the school district is under XXX or  
11 over XXX.

12           Sec. 3. The school board or board of education shall  
13 deposit all funds received from the State Treasurer pursuant to  
14 section 2 of this act into a special fund it has established for  
15 purposes of acquiring sites for school buildings or teacherages,  
16 purchasing existing buildings for use as school buildings or  
17 teacherages, as permitted by sections 79-10,120, 79-10,122, and  
18 79-10,126, and shall be in addition to the permitted levied  
19 proceeds for the special fund. The funds shall be used only for  
20 the purposes permitted for the special site and building funds of  
21 school districts.

22           Sec. 4. Section 77-2704.10, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24           77-2704.10. Sales and use taxes shall not be imposed on  
25 the gross receipts from the sale, lease, or rental of and the  
26 storage, use, or other consumption in this state of:

27           (1) Meals and food products, including ~~soft drinks and~~  
28 ~~candy~~ snack food, for human consumption served by public or private

1 schools, school districts, student organizations, or parent-teacher  
2 associations pursuant to an agreement with the proper school  
3 authorities, in an elementary or secondary school or at any  
4 institution of higher education, public or private, during the  
5 regular school day or at an approved function of any such school or  
6 institution, but such exemption shall not apply to sales at any  
7 facility or function which is open to the general public, except  
8 that concession sales by elementary and secondary schools, public  
9 or private, shall be exempt;

10 (2) Meals and food products, including ~~soft drinks and~~  
11 ~~candy~~ snack food, for human consumption when sold by a church at a  
12 function of such church;

13 (3) Meals and food products, including ~~soft drinks and~~  
14 ~~candy~~ snack food, for human consumption when served to patients and  
15 inmates of hospitals and other institutions licensed by the state  
16 for the care of human beings;

17 (4) Meals and food products, including ~~soft drinks and~~  
18 ~~candy~~ snack food, for human consumption when sold at a political  
19 event by ballot question committees, candidate committees,  
20 independent committees, and political party committees as defined  
21 in the Nebraska Political Accountability and Disclosure Act or fees  
22 and admissions charged for such political event;

23 (5) Meals and food products sold to the elderly,  
24 handicapped, or recipients of Supplemental Security Income by an  
25 organization that actually accepts electronic benefits transfer or  
26 food coupons under regulations issued by the United States  
27 Department of Agriculture although it is not necessary for the  
28 purchaser to use electronic benefits transfer or food coupons to

1 pay for the meal; and

2 (6) Fees and admissions charged by a public or private  
3 elementary or secondary school and fees and admissions charged by a  
4 school district, student organization, or parent-teacher  
5 association, pursuant to an agreement with the proper school  
6 authorities, in a public or private elementary or secondary school  
7 during the regular school day or at an approved function of any  
8 such school.

9 (7) For purposes of this section, snack food has the same  
10 meaning as in section 77-2704.24.

11 Sec. 5. Section 77-2704.24, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13 77-2704.24. (1) Sales and use taxes shall not be imposed  
14 on the gross receipts from the sale, lease, or rental of and the  
15 storage, use, or other consumption in this state of food or food  
16 ingredients except for prepared food and food sold through vending  
17 machines and snack foods.

18 (2) For purposes of this section:

19 (a) Alcoholic beverages means beverages that are suitable  
20 for human consumption and contain one-half of one percent or more  
21 of alcohol by volume;

22 (b) Dietary supplement means any product, other than  
23 tobacco, intended to supplement the diet that contains one or more  
24 of the following dietary ingredients: (i) A vitamin, (ii) a  
25 mineral, (iii) an herb or other botanical, (iv) an amino acid, (v)  
26 a dietary substance for use by humans to supplement the diet by  
27 increasing the total dietary intake, or (vi) a concentrate,  
28 metabolite, constituent, extract, or combination of any ingredients

1 described in subdivisions (2)(b)(i) through (v) of this section;  
2 that is intended for ingestion in tablet, capsule, powder, softgel,  
3 gelcap, or liquid form or, if not intended for ingestion in such a  
4 form, is not presented as conventional food and is not represented  
5 for use as a sole item of a meal or of the diet; and that is  
6 required to be labeled as a dietary supplement, identifiable by the  
7 supplemental facts box found on the label and as required pursuant  
8 to 21 C.F.R. 101.36, as such regulation existed on January 1, 2003;

9 (c) Food and food ingredients means substances, whether  
10 in liquid, concentrated, solid, frozen, dried, or dehydrated form,  
11 that are sold for ingestion or chewing by humans and are consumed  
12 for their taste or nutritional value. Food and food ingredients  
13 does not include alcoholic beverages, dietary supplements, or  
14 tobacco;

15 (d) Food sold through vending machines means food that is  
16 dispensed from a machine or other mechanical device that accepts  
17 payment;

18 (e) Prepared food means:

19 (i) Food sold with eating utensils provided by the  
20 seller, including plates, knives, forks, spoons, glasses, cups,  
21 napkins, or straws. A plate does not include a container or  
22 packaging used to transport the food; and

23 (ii) Two or more food ingredients mixed or combined by  
24 the seller for sale as a single item and food sold in a heated  
25 state or heated by the seller, except:

26 (A) Food that is only cut, repackaged, or pasteurized by  
27 the seller;

28 (B) Eggs, fish, meat, poultry, and foods containing these

1 raw animal foods requiring cooking by the consumer as recommended  
2 by the federal Food and Drug Administration in chapter 3, part  
3 401.11 of its Food Code, as it existed on January 1, 2003, so as to  
4 prevent food borne illnesses;

5 (C) Food sold by a seller whose proper primary North  
6 American Industry Classification System classification is  
7 manufacturing in sector 311, except subsector 3118, bakeries;

8 (D) Food sold in an unheated state by weight or volume as  
9 a single item; and

10 (E) Bakery items, including bread, rolls, buns, biscuits,  
11 bagels, croissants, pastries, donuts, danish, cakes, tortes, pies,  
12 tarts, muffins, bars, cookies, and tortillas;

13 (f) Snack food means (i) soft drinks, carbonated or  
14 noncarbonated but excluding water, which do not contain primary  
15 dairy product or dairy ingredient base or which contain less than  
16 fifteen percent natural fruit or vegetable juice, (ii) candy, (iii)  
17 chewing gum, and (iv) prepackaged snack foods in packages  
18 containing no more than eight ounces of (A) potato chips or sticks,  
19 (B) corn chips or pretzels, (C) cheese puffs and curls, (D) pork  
20 rinds, (E) popped popcorn, (F) snack mixtures that contain one or  
21 more of the foods listed in subdivisions (A) through (E) of this  
22 subdivision, (G) cookies, cakes, pies, donuts, and other pastries;  
23 and

24 ~~(f)~~ (g) Tobacco means cigarettes, cigars, chewing or pipe  
25 tobacco, or any other item that contains tobacco.

26 Sec. 6. Section 77-27,132, Reissue Revised Statutes of  
27 Nebraska, is amended to read:

28 77-27,132. (1) There is hereby created a fund to be

1 designated the Revenue Distribution Fund which shall be set apart  
2 and maintained by the Tax Commissioner. Revenue not required to be  
3 credited to the General Fund or any other specified fund may be  
4 credited to the Revenue Distribution Fund. Credits and refunds of  
5 such revenue shall be paid from the Revenue Distribution Fund. The  
6 balance of the amount credited, after credits and refunds, shall be  
7 allocated as provided by the statutes creating such revenue.

8 (2) The Tax Commissioner shall pay to a depository bank  
9 designated by the State Treasurer all amounts collected under the  
10 Nebraska Revenue Act of 1967. The Tax Commissioner shall present  
11 to the State Treasurer bank receipts showing amounts so deposited  
12 in the bank, and of the amounts so deposited the State Treasurer  
13 shall credit to the Highway Trust Fund all of the proceeds of the  
14 sales and use taxes derived from motor vehicles, trailers, and  
15 semitrailers and to the Nebraska School Facilities Trust Fund all  
16 the proceeds of the sales and use tax derived from snack food,  
17 except that the proceeds equal to any sales tax rate provided for  
18 in section 77-2701.02 that is in excess of five percent derived  
19 from motor vehicles, trailers, and semitrailers shall be credited  
20 to the General Fund. The balance of all amounts collected under  
21 the Nebraska Revenue Act of 1967 shall be credited to the General  
22 Fund.

23 Sec. 7. Section 79-1018.01, Reissue Revised Statutes of  
24 Nebraska, is amended to read:

25 79-1018.01. Local system formula resources include other  
26 actual receipts available for the funding of general fund operating  
27 expenditures as determined by the department for the second school  
28 fiscal year immediately preceding the school fiscal year in which



1 aid is to be paid, except that receipts from the Community  
2 Improvements Cash Fund, receipts acquired pursuant to the Low-Level  
3 Radioactive Waste Disposal Act, and, beginning with the calculation  
4 of state aid to be distributed in school fiscal year 2004-05,  
5 tuition receipts from converted contracts shall not be included.

6 Other actual receipts include:

7 (1) Public power district sales tax revenue;

8 (2) Fines and license fees;

9 (3) Tuition receipts from individuals, other districts,  
10 or any other source except those derived from adult education and  
11 except, beginning with the calculation of state aid to be  
12 distributed in school fiscal year 2004-05, tuition receipts from  
13 converted contracts;

14 (4) Transportation receipts;

15 (5) Interest on investments;

16 (6) Other miscellaneous noncategorical local receipts,  
17 not including receipts from private foundations, individuals,  
18 associations, or charitable organizations;

19 (7) Special education receipts, excluding grant funds  
20 received pursuant to section 9-812;

21 (8) Special education receipts and non-special education  
22 receipts from the state for wards of the court and wards of the  
23 state;

24 (9) All receipts from the temporary school fund.  
25 Beginning with the calculation of aid for school fiscal year  
26 2002-03 and each school fiscal year thereafter, receipts from the  
27 temporary school fund shall only include receipts pursuant to  
28 section 79-1035 and the receipt of funds pursuant to section

1 79-1036 for property leased for a public purpose as set forth in  
2 subdivision (1)(a) of section 77-202;

3 (10) Motor vehicle tax receipts received on or after  
4 January 1, 1998;

5 (11) Pro rata motor vehicle license fee receipts;

6 (12) Other miscellaneous state receipts excluding revenue  
7 from the textbook loan program authorized by section 79-734;

8 (13) Impact aid entitlements for the school fiscal year  
9 which have actually been received by the district to the extent  
10 allowed by federal law;

11 (14) All other noncategorical federal receipts;

12 (15) All receipts pursuant to the enrollment option  
13 program under sections 79-232 to 79-246;

14 (16) Receipts under the federal Medicare Catastrophic  
15 Coverage Act of 1988, as such act existed on May 8, 2001, as  
16 authorized pursuant to sections 43-2510 and 43-2511 but only to the  
17 extent of the amount the local system would have otherwise received  
18 pursuant to the Special Education Act; ~~and~~

19 (17) Receipts for accelerated or differentiated  
20 curriculum programs pursuant to sections 79-1106 to 79-1108.03; and

21 (18) Receipts from the Nebraska School Facilities Trust  
22 Fund.

23 Sec. 8. This act becomes operative on October 1, 2005.

24 Sec. 9. Original sections 77-2704.10, 77-2704.24,  
25 77-27,132, and 79-1018.01, Reissue Revised Statutes of Nebraska,  
26 are repealed.